

ORIGINAL

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OFELIA COLOYAN

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

FEB 28 2006  
at 3 o'clock and 10 min. PM  
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

OFELIA COLOYAN

Plaintiff,

vs.

WILLIAM BADUA, JEFFERY  
OMAI; SPENCER ANDERSON;  
NEIL PANG; and DOES 5-10

Defendants.

)  
) CIVIL NO. 03-00476-KSC  
)  
) PLAINTIFF'S MEMORANDUM IN  
) OPPOSITION TO DEFENDANTS  
) WILLIAM P. BADUA, SPENCER  
) ANDERSON, and JEFFERY  
) OMAI'S MOTION IN LIMINE NO.  
) 7 RE: PRECLUDING PLAINTIFF'S  
) EXPERT WITNESS' TESTIMONY  
) AND REPORT, CERTIFICATE OF  
) SERVICE  
)  
) HEARING:  
)  
) DATE: March 13, 2006  
)  
) TIME: 1:30 p. m.

)  
) JUDGE: Hon. Kevin S. C. Chang  
) Trial is set for March 14, 2006.  
)

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PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS  
WILLIAM P. BADUA, SPENCER ANDERSON and JEFFERY OMAI'S  
MOTION IN LIMINE NO.7 RE: PRECLUDING PLAINTIFF'S EXPERT  
WITNESS' TESTIMONY AND REPORT

The Defendants object to Robert C. Marvit, M. D.(hereinafter referred as Dr. Marvit) being qualified as an expert witness for the purpose of rebutting the testimony of their expert witness, Byron Eliashof, M. D. (hereinafter referred to as Dr. Eliashof). The Defendants object to the qualification of Dr. Marvit on the grounds that his testimony is not sufficiently scientific to adequately assist the fact finder, he has not examined the Plaintiff, spent sufficient time on the matter, and relies upon Dr. Eliashof's report and certain of the Plaintiff's medical records.

The purpose of expert testimony is to help the finder of fact to make sense out of the evidence, which is outside the understanding of the community in general. This is not to say that expert testimony is admissible to explain just anything away

Before a witness can be qualified as an expert witness, there must be a scientific basis for his testimony and that the witness' conclusions are based upon the recognized methodology of that science. In this case, Dr. Marvit is going to

testify on Dr. Eliashof's conclusions about the cause and extent of the psychiatric injuries to the Plaintiff.

The law recognizes Psychiatry as one of the scientific disciplines that expert testimony may be given. The Defendants have failed to show how Dr. Marvit's testimony does not meet the protocols recognized by that discipline, and therefore, there is no reason to believe that Dr. Marvit should not be qualified as an expert.

Dr. Marvit's reliance upon Dr. Eliashof's report and certain other medical records do not disqualify Dr. Marvit from testifying as an expert. An expert witness may testify about the reports of other experts along with reviewing and may base his opinions largely, if not exclusively on the report of a single expert. United States v. Smith, 964 F. 2d 1221(D. C. Cir. 1992).

In Smith, the government's original expert was unavailable. The government called the original expert's supervisor.

The Defendant objected on the grounds that the supervisor had not done any of the work in analyzing the drug that was the subject of his testimony and therefore, his testimony was inadmissible because it was hearsay. In affirming the admission of the supervisors testimony, the appellate Court held that so long as the data contained in the report was the kind of information that experts normally relied upon. id page 1223.

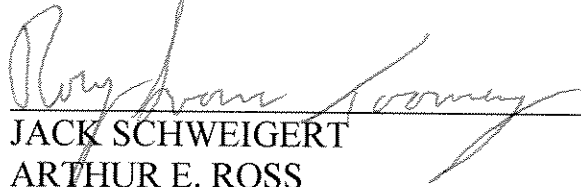
In this case the information that Dr. Marvit relies upon is the same data that Dr. Eliashof relied upon to form his conclusions. Therefore, Dr. Marvit's use of that material is not barred.

CONCLUSION

***THE DEFENDANTS' MOTION IN LIMINE MUST BE DENIED.***

DATED: Honolulu, Hawaii, February 28, 2006

Respectfully Submitted

A handwritten signature in dark ink, appearing to read "Rory Soares Toomey", is written over a horizontal line.

JACK SCHWEIGERT  
ARTHUR E. ROSS  
RORY SOARES TOOMEY  
Attorneys for Plaintiff

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Defendants.

CIVIL NO. 03-00476-KSC

CERTIFICATE OF SERVICE

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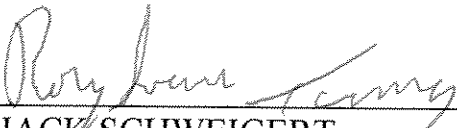
I **HEREBY CERTIFY** that on February 28, 2006, a copy of the attach  
document was served upon:

KENDRA K. KAWAI  
550 S. KING ST., Rm 110  
HONOLULU, HAWAII

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Attorney for Defendants  
WILLIAM BADUA; SPENCER  
ANDERSON, NEIL PANG

DATED: Honolulu, Hawaii, February 28, 2006

  
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